

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL REVISION APPLICATION No. 794 of 2005****For Approval and Signature:****HONOURABLE MR.JUSTICE A.M.KAPADIA**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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HASAN AAMAD PARADIA - Applicant(s)
Versus
STATE OF GUJARAT - Respondent(s)

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Appearance :

MR ZUBIN F BHARDA for Applicant(s) : 1,
MR HM PRACHCHHAK APP for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA**Date : 06/10/2005****ORAL JUDGMENT**

1. By filing instant petition under section 397 read with section 401 of the Code of Criminal Procedure ('the Code' for short), the petitioner seeks to challenge the order dated 12.4.2004 recorded below application Ex.111

in Criminal Case No.1968 of 1986 by the learned JMFC, Veraval by which the petitioner was convicted of the offence punishable under section 200 of the IPC and was ordered to pay fine of Rs.100/- and in default of payment of fine, to undergo simple imprisonment for a period of ten days.

2. The petitioner is a resident and elected Sarpanch of Daari Gram Panchayat, Taluka Veraval, District Junagadh. The learned JMFC, Veraval issued a show cause notice dated 25.2.2004 calling upon the petitioner to answer on the allegation that on 9.1.2004 the investigating officer of Criminal Case No.1968 of 1986 had gone to serve summons upon accused person Kasam Ami and at that time, the petitioner, in his capacity as Sarpanch, had stated that Kasam Ami who was the accused in that criminal case had expired. Thereafter on 12.1.2004 when said Kasam Ami had applied to the court of learned JMFC, Veraval for cancellation of the said warrant, it had come to the knowledge of the learned Magistrate that the statement signed by the petitioner in his capacity as Sarpanch of village Daari was false and therefore the learned Magistrate vide order dated 10.2.2004 directed to issue a notice against the petitioner calling upon him to explain

as to why the petitioner should not be punished for the offence of giving false statement before the police officer under section 193 of the IPC.

3. That on the notice being issued upon the petitioner which was issued vide Ex.118 dated 25.2.2004, the petitioner remained present before the learned Magistrate and submitted his written explanation vide Ex.119 on 7.4.2004. In the said explanation the petitioner has pointed out that it was not the duty of the Sarpanch of the village to keep a track as to who is dead or who is alive in the village and that it is the duty of the investigating officer who had come to serve the warrant to inquire as to whether the person on whom the warrant was issued is dead or alive. In his explanation, the petitioner has categorically denied to have made any false statement to the police officer in respect of Kasam Ami having died. According to the petitioner, the investigating officer came to the petitioner and informed him that upon inquiring about the accused Kasam Ami the investigating officer was informed that he has expired and therefore the petitioner has also casually informed the investigating officer that he might have died. However, the investigating officer obtained the signature

of the petitioner by preparing a statement in his own handwriting and after obtaining the signature of the petitioner he left the village in a hurry. The petitioner also expressed his apology by stating that he has not committed any offence but even if the learned magistrate considers the petitioner to be wrong then the petitioner prayed for pardon of learned magistrate as the mistake committed by him was not intentional.

4. The learned Magistrate vide order dated 12.4.2004 convicted the petitioner for commission of the offence under section 200 of the IPC and ordered to pay fine of Rs.100/- and in default of payment of fine to suffer S.I. for ten days which has given rise to the present petition.

5. Mr. Bharda, learned advocate for the petitioner, has contended that the impugned order is contrary to the facts and circumstances of the case as the learned Magistrate has passed the impugned order without considering the statement of the petitioner in its true sense and perspective. According to him, the learned Magistrate has misinterpreted the statement dated 9.1.2004 signed by the petitioner. According to him, a

bare perusal of the statement clearly indicates that the petitioner has not even indirectly claimed to have knowledge of Kasam Ami having expired. Even then the learned magistrate has proceeded against the petitioner on her whims and imagination and convicted the petitioner. Therefore, he urged that the impugned order suffers from basic infirmity and illegality and the same deserves to be quashed and set aside by allowing this petition. He therefore urged to allow this petition and thereby quash and set aside the impugned order.

6. Mr. HM Prachchhak, learned APP for the respondent - State of Gujarat has stated that in view of the facts and circumstances emerging from the record of the case and more particularly in view of the statement of the petitioner, appropriate orders may be passed.

7. This Court has considered the submissions advanced by Mr. Bharda, learned advocate for the petitioner and Mr. HM Prachchhak, learned APP for the respondent - State of Gujarat, perused the impugned order as well as the statement dated 9.1.2004 given by the petitioner and recorded by the investigating officer which is produced at Ex.111.

8. It is not in dispute that the petitioner was an elected Sarpanch of Daari village, Taluka Veraval, District Junagadh, at the relevant time. A show cause notice dated 25.2.2004 was issued to him by the learned JMFC, Veraval calling upon him to answer to the allegation that on 9.1.2004 the investigating officer of Criminal Case No.1968 of 1986 had come to serve warrant upon Kasam Ami, an accused person of the said case, and at that time the petitioner, in his capacity as Sarpanch, had given his statement recorded by the investigating officer. The learned magistrate had issued notice dated 25.2.2004 vide Ex.118 calling upon the petitioner to give his explanation why he has stated false version before the investigating officer who had come to him to inquire about accused Kasam Ami. The said statement was recorded by the investigating officer on 9.1.2004 and according to the show cause notice in the said statement the petitioner had given false version about demise of Kasam Ami. The Court has considered the statement and has come to the conclusion that the petitioner has stated false information about the demise of said Kasam Ami the accused of the Criminal Case No.1968 of 1986 who was in fact not dead but alive.

9. Screening the notice dated 25.2.2004 issued by the learned Magistrate calling upon the petitioner to explain as to why he should not be punished for an offence alleged to have been committed by him under section 193 of the IPC, clearly shows that the petitioner has only signed a statement which has been obtained by the investigating officer when the investigating officer had come to serve a warrant upon the accused of Criminal Case No.1968 of 1986 with which the petitioner is not at all concerned. In fact the investigating officer who had come to serve the summons upon the accused persons of Criminal Case No.1968 of 1986 had come with information with regard to some of the accused persons of Criminal Case No.1968 of 1986 having expired and thereafter the petitioner who was the Sarpanch of the Daari village was asked to sign the statement prepared by the police officer who had come to serve summons and if the statement signed by the petitioner on 9.1.2004 is perused the petitioner has not made any false assertion or incorrect statement but the learned Magistrate has by forming an absolutely incorrect opinion proceeded to issue notice against the petitioner and after considering the explanation of the petitioner which was of total

denial has on her own proceeded to convict the petitioner under Section 200 of the IPC which, according to this court, is absolutely unjust and illegal. According to this Court, the learned magistrate has misinterpreted the statement dated 9.1.2004 given by the petitioner and which was recorded by the investigating officer as in fact the petitioner has never given incorrect information about demise of Kasam Ami.

10. In aforesaid view of the matter, since the impugned order is passed without properly interpreting the language of the statement given by the petitioner and recorded by the investigating officer, deserves to be quashed and set aside by allowing this petition in exercise of the powers conferred under section 397 read with section 401 of the Code.

11. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The impugned order dated 12.4.2004 recorded below application Ex.111 in Criminal Case No. 1968 of 1986 by the learned JMFC, Veraval, District Junagadh is hereby quashed and set aside. Rule is made absolute.

12. Mr. Bharda, learned Advocate for the petitioner, states that the petitioner has already paid the fine. Hence, the fine paid by the petitioner in the Court of learned JMFC, Veraval, is ordered to be refunded to the petitioner, upon due verification.

D.S. is permitted.

(A.M. Kapadia, J.)

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